IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 84 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAGDISHBHAI @ SUNIL HARISHCHADNRA KHATIK

Versus

DY POLICE COMMISSIONER

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Appearance:

MR RM PARMAR for Petitioner

RULE SERVED for Respondent No. 1

Mr. K.G.Sheth, learned APP for Respondent No. 3

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/09/2000

ORAL JUDGEMENT

1. The petitioner abovenamed has preferred this petition under Articles 226 and 227 of the Constitution of India challenging the order of externment passed by

the Deputy Commissioner of Police, Crime Branch, Ahmedabad City on 31.10.1999 and confirmed in Appeal on 7.1.2000 under Section 60 of the Bombay Police Act, 1951 (hereinafter referred to as "the said Act").

2. It appears that the petitioner was served with show cause notice as to why he should not externed out of the limits of the area stated in the show cause notice placed at Annexure-A to this petition. Notice is dated 30.4.1999. The present petitioner submitted his reply to the said show cause notice placed at Annexure-B to this petition. That after hearing the matter, the Dy. Commissioner of Police, Crime Branch, Ahmedabad City has passed order on 31.10.1999 directing externment of the petitioner from the area mentioned in the said order for a period of 2 years from the date of the order. The petitioner had preferred appeal under Section 60 of the said Act, memo of which is placed at Annexure-D to this petition. The matter was heard and disposed of by the second respondent under which the said authority dismissed the said appeal of the appellant. The orders of the said authority has been placed at Annexure-E to this petition.

3. Feeling aggrieved by the aforesaid orders, the present petitioner has preferred this petition before this Court. It has been mainly contended here that the order of externment of the petitioner from the aforesaid area is illegal. That the said two authorities have not considered the defence witnesses examined by the petitioner on his behalf before the Deputy Commissioner of Police. It has also been contended that the said two authorities have externed the petitioner out of so many districts without any reason and, therefore, the orders of the said two authorities suffer from the infirmities. It is further contended that it is not stated that as to at which place the events took place against the petitioner which were considered for the purpose of externing the petitioner out of limits of aforesaid districts. that their orders are illegal and erreneous and deserves to be quashed and set aside. The petitioner therefore prays that the present petition be allowed and the aforesaid orders of the said two authorities be quashed and set aside.

4. Rule was issued and Mr. K.G.Sheth, learned APP appears for State. I have heard learned advocates for the parties and have perused the papers.

5. It has been mainly contended here that the petitioner had examined so many witnesses and the same

has not been considered by the said two authorities. In reply to the show cause notice at Annexure-B to this petition, the said contention has been taken by the petitioner and has stated in it that leading persons of the area have been examined by the petitioner as his witnesses and they have tendered depositions before the authority and they have proved that the petitioner is an innocent person. Now, the petitioner states that the evidence of those witnesses has not been considered by the said two authorities. If we go through the order of the Deputy Commissioner of Police dated 31.10.1999, we find that the said order does not refer to the witnesses examined by the petitioner and same way, if we refer to the orders of the second respondent at Annexure-E dated 7.1.2000, it also makes it very clear that there also there is no mention that the witnesses have been examined by the petitioner. The said two authorities have not considered the evidence of the witnesses examined by the petitioner in his defence.

6. Mr. K.G.Sheth, learned APP has argued that the authorities have stated in their orders that they have considered the material placed before them. Now, this is a very vague statement of fact. It is very difficult to agree that this would include the evidence of witnesses examined by the petitioner. In fact, when the petitioner has examined the witnesses then it was necessary for the said two authorities to consider the same and give some reasons for not accepting the evidence of those witnesses. This can be done only by referring to the said witnesses and their evidence on record. In fact, the said two authorities have not touched the evidence of those witnesses. This would mean that there is non-application of mind in respect of the material available to the authority. The other material was before Deputy Commissioner of Police as well as before second respondent. The said two authorities have not considered the said material and, therefore, it can be said that the ultimate orders passed by the said two authorities suffer from aforesaid infirmity of non-application of mind.

7. In aforesaid view of the matter, the externment order cannot be treated to be legal and valid when it is apparent that there is a case of non-application of mind by the said two authorities. In aforesaid view of the matter, the learned advocate for the petitioner does not press for remaining grounds. Now it is apparent on the face of the record that the said two authorities have not applied their mind. The orders of detention cannot be sustained and therefore, they are required to be quashed

and set aside.

8. In the result, the present petition is allowed and the order of externment of the petitioner passed by the Deputy Commissioner of Police dated 31.10.1999 and confirmed in Appeal by the second respondent on 7.1.2000 are quashed and set aside. Rule made absolute. Direct service is permitted.

(D.P.Buch,J)

(Vipul)